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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
No. 82-5112

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF NEW JERSEY

REPLY BRIEF

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ARGUMENT

APPELLEE'S CONTENTION THAT THE QUESTION RAISED IN THE APPEAL IS INSUBSTANTIAL MUST FALL BECAUSE IT IS FOUNDED UPON NOTHING MORE THAN COUNSEL'S UNSWORN FACTUAL ASSERTIONS.

Appellee, in his motion to dismiss or affirm this appeal, states at pp. 45:

> "First, as discussed in New Jersey Supreme Court's opinion below, the administrative procedure in effect since 1978 mandates the furnishing of a Spanish translation of the Notice of Determination-which contains notice of the time limits for appeals-to unemployment insurance claimants who are literate only in that language. Because of the huge volume of claims processed in the Newark office where appellant filed her claim, the New Jersey Department of Labor could not affirmatively prove that this Spanish-language document was in fact given to appellant, and the New Jersey Supreme Court made no finding on this point. Similarly, the practice in New Jersey claims offices serving a substantial Hispanic population has for many years been to insure that an interpreter is available to assist Hispanics who cannot read or understand English. The New Jersey Supreme Court alluded to documentary evidence indicating that an interpreter assisted appellant at her claim interview and explained the appellate time limitation; however, the court declined in the absence of definitive proof to resolve this factual issue.
>
> Despite the New Jersey Supreme Court's inability on the present record to make a definitive finding that appellant had in fact received the Spanish translation of the Notice of Determination as required by the state administrative policy, the crucial point is that that procedure did and does require such a written translation to be furnished to Hispanic claimants, and that any departure from this practice that may have occurred here represented an isolated and inadvertent deviation from the prescribed policy."

The principle that an appellate court must decide a case solely on the record before it is incontrovertible. Russell v. Southard, 53 U.S. 139, 158-9 (1851); Hooey v. Wilson, 9 Wall 501 (1870); Clark v. Pennsylvania, 128 U.S. 395, 397 (1888); Adickes v. Kress & Co., 398 U.S. 144, 157-158 N.16 (1970). Appellee's argument ignores this tenet by relying upon numerous unsupported assertions of fact that have never been presented before or found to exist by any tribunal which has heard this case.

The record is devoid of any evidence relating to the practice of the New Jersey Department of Labor when dealing with non-English speaking claimants. This is made obvious by the absence of any reference to the record in the above quoted language. Furtermore, the fact that no hearing was ever given to the Appellant, that being the relief which Appellant has sought from the Courts below, amply demonstrates that no testimony has ever been taken in this case.

Appellee's argument that the question presented is insubstantial because what "...may have occurred here represented an isolated and inadvertant deviation from prescribed policy..." cannot stand since it is founded upon nothing more than counsel's unsworn assertions.

CONCLUSION

For the foregoing reasons it is respectfully requested that Appellee's motion to dismiss or affirm be denied.

Respectfully submitted,

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DATED: September 17, 1982

IN THE
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October Term 1982
No. 82-5112

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
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STATE OF NEW JERSEY,

Appellee.

PROOF OF SERVICE

I certify that on September 20, 1982 one copy of the Repy Brief was mailed to Irwin Kimmelman, Attorney General of New Jersey, attention Michael Bokar, Deputy Attorney General, Richard J. Hughes Justice Complex, Trenton, New Jersey 08625 by ordinary mail.

DATED: September 20, 1982.

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